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# Law against Order: Human Rights Organizations and (versus?) the Palestinian Authority

LISA HAJJAR\*

## I. INTRODUCTION

The outbreak of relatively large-scale, open violence in Israel, the West Bank and Gaza in October 2000 proved the fragility of the interim arrangements. The “second uprising,” or “new *intifada*” as it is often called, resembles the first uprising (1987-1993) in some regards, notably the Palestinian desperation and frustration it showcases. One crucial difference is the profoundly changed political context.<sup>1</sup> The first uprising came at a time of total political stalemate in the Israeli-Palestinian conflict. It revealed the untenability of Israeli occupation over all of the West Bank and Gaza, and this was a factor that pushed Israeli and Palestinian leaders to begin a process of direct negotiations in 1991. The results of these negotiations have included the signing of a Declaration of Principles in 1993, the beginning of a phased redeployment of Israeli military forces, and the establishment in 1994 of a Palestinian Authority (PA) with limited powers of “self-government” over parts of the Palestinian population and territory in the West Bank and Gaza. Despite these changes, the negotiations have failed to produce an agreement that would end the conflict, let alone bring peace. What they produced, instead, is an interim.

Much of the analysis that strives to explain the renewed violence has focused on the negotiations, specifically on the gaps between what Palestinians expected or could hope to expect, and what they have actually gotten, or, more aptly, failed to get. Since 1993 standards of living have fallen dramatically (i.e., no “peace dividend”), Israeli land confiscation and Jewish settlement building have continued unabated (i.e., no end to occupation), Palestinian statehood remains deferred (i.e., no self-determination), refugees remain unrepatriated (i.e., no right of return), and so on. For many commentators and informed observers, the negotiations represent either the cause or solution to the current crisis, or both. For most, notwithstanding vast differences of opinion and perspective,

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1. Rema Hammami and Salim Tamari, *Anatomy of Another Rebellion*, MIDDLE EAST REP., Winter 2000, at 2.

negotiations represent the only viable political option to pursue an end to the conflict.

The focus of this Article is not the Israeli-Palestinian negotiations but the interim itself. The central concern is the politics of law and order in PA areas, specifically struggles over human rights and the rule of law. I argue that the form and trajectory of these struggles are shaped largely by the fact that Palestinians are living in a protracted interim phase. One key factor is the nature of PA rule, which could be described as “autonomous authoritarianism.”

Some of the harshest and most consistent criticism of PA rule has come from Palestinian human rights organizations. The weakness of the PA in relation to Israel and the fragility of the current situation are used to justify official condemnation and repression of local critics, including human rights organizations and activists. These tensions have affected popular attitudes and debates about human rights. But other factors, including the role of international organizations, also contribute to official antipathy and public skepticism about the appropriateness and efficacy of human rights in such a politically unstable and economically underdeveloped society. In this regard, struggles over human rights in Palestine resemble circumstances elsewhere in the Middle East and other parts of the world.

## II. IN-BETWEEN TIME

An “interim” is a temporal concept, describing an in-between time. In this context, it describes the period between the “before,” before the start of negotiations, the creation of a PA, etc., and the “end,” the signing of a final agreement that will transform the conflict from politics into history. The desire and mutual need for peace will keep pulling Israeli and Palestinian representatives back to the negotiating table, if for no other reason than a lack of viable alternatives. National elites on both sides, and the constituencies with whom they are aligned, have become politically dependent on the *process* of peace-making.

But the irreconcilability of Israeli and Palestinian national claims and interests holds the end in abeyance, stretching present time into an interminable in-between phase. For Israelis, the interim is significant but relatively less decisive to their collective well-being since they already have a sovereign state and a robust economy. For Palestinians, the interim represents a major transition—from statelessness to proto-statehood. The PA is an “interim government,” not a sovereign state. It lacks independence, control over borders, natural resources, trade, immigration, and other trappings of sovereignty. It also lacks control over “national time.” For example, in May 1999, Palestinians were poised to

exercise their national will by declaring an independent state. The date was not arbitrary; it had been set years before as the scheduled end to the interim. But powerful others convinced or pressured the PA to wait, or rather, to keep waiting for a better, more appropriate time. For the Palestinian people, "in the interim" has become a way of life.

What is living in the interim like for Palestinians? Of course, we must be cautious about over generalizing. For some well-connected individuals, the interim is a boom-time. The Palestinian economy in the "self-governing" areas is the most privatized of any in the entire Middle East.<sup>2</sup> The combination of limited political autonomy, persisting statelessness and poorly—or corruptly—regulated investments and business monopolies has created narrow but deep opportunities for profiteering. For most, though, the interim is a desperate time. Those who remain cautiously optimistic about the prospects for peace cling to the hope that this interim is merely a period of delayed gratification, that ultimately there will be a reward for struggle and steadfastness. The question is whether the interim can be conceived as a period and process of "state-building." Palestinian critics of the Israeli-Palestinian negotiations see the cause of national independence as so badly compromised that "Palestine" will become, or has become, not a state-in-the-making but a collection of bantustans, confining some and excluding others.<sup>3</sup> Skeptics concede that Palestine might become a state someday, but a bad one. They predict Palestine will be another "Arab dictatorship" bearing no resemblance to the dream of democratic self-determination that animated the decades of national struggle. For Palestinians in the diaspora, especially those still living as refugees in surrounding Arab states, the interim serves, paradoxically, as a nominally hopeful interlude, staving off a miserable, exclusionary, dream-killing end to a collective, trans-continental Palestinian time.

For Palestinians in the West Bank and Gaza, the prospect of statehood seems more tangible. Since 1994, some of the trappings of a state have been instituted: ministries have been formed and staffed, jurisdictions have been drawn, and a legislative council has been elected. In circulation are discourses of state-making and statehood: territorial control, economic development, national security, separation of powers, and the rule of law. In this interim, and because it *is an interim*, there is a heightened consciousness about the opportunities transition affords. Some are taking advantage of the unsettledness to compete for power.

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2. William A. Orme, Jr., *For Palestinians, O Little Town of Business Plans*, N.Y. TIMES, May 10, 2000, at A4.

3. See GRAHAM USHER, *PALESTINE IN CRISIS: THE STRUGGLE FOR PEACE AND POLITICAL INDEPENDENCE AFTER OSLO* (2d ed. 1997).

Others are seeking to thwart final outcomes that contravene the principles of democracy and the rule of law.

Among those who are trying to use the interim to “do good” are Palestinian human rights organizations (HROs) in the West Bank and Gaza. The politics and discourse of human rights in these areas developed under and in response to Israeli military occupation.<sup>4</sup> Since 1994, their focus has shifted—or broadened—to include corruption, violations, and derogations of the rule of law by the PA. HROs legitimize their criticisms of the PA as a continuation of their role as champions and defenders of Palestinians’ rights. They have reformulated their agendas and strategies to monitor the exercise of PA power and to advocate the establishment of mechanisms and popular expectations for governmental accountability. HROs see the interim as crucial to entrenching a culture of rights and the rule of law. The PA, finding itself having to contend with critics and criticisms from “within” (the national community), has attempted to delegitimize HROs as disrupting or undermining “national unity” during this “fragile time.”

Hence, what has emerged are competing discourses, each claiming to represent the “national good.” Human rights discourse holds forth a vision of the future that is as attentive to individuals as it is to the collective. Human rights discourse prioritizes democratic pluralism, equality, and the rule of law as both means and goals of state-building. In contrast, the discourse of the PA prioritizes unity, loyalty and order. For the PA now, as for its precursor, the Palestine Liberation Organization (PLO), the interests of the Palestinian people are conceived in collective terms and managed through centralized political structures.

The transition of the Palestinian leadership, from a resistance movement under the umbrella of the PLO, whose center of operation was the diaspora (Jordan until 1970, Lebanon until 1983, and Tunisia until 1994), to a “self-governing” authority geographically concentrated in portions of the occupied territories, has been fraught with problems. The PA has utilized means to establish its rule and to maintain order that give it an uncanny resemblance to the Israeli military administration that it has partially replaced. For example, the use of security laws, military courts, brutal interrogation tactics, and censorship of oppositional speech are elements of continuity from an Israeli-controlled past to a PA-controlled present. HROs criticize such practices, both as violations of human rights and as inimical to national interests, while the PA justifies

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4. Lisa Hajjar, *From the Fight for Legal Rights to the Promotion of Human Rights: Israeli and Palestinian Cause Lawyers in the Trenches of Globalization*, in *CAUSE LAWYERING AND THE STATE IN THE GLOBAL ERA* (Austin Sarat & Stuart Scheingold eds., 2001).

them as necessary and therefore legitimate to protect the gains of national power in the homeland.

In the interim, PA rule has assumed a highly authoritarian form, with governing power concentrated in the hands of a coterie of PLO-cum-PA leaders and especially in the person of "President" Yasir Arafat. But this power is autonomous, not sovereign, and any ability to maintain it is contingent on the PA's ability and willingness to keep "the people" under control in accordance with Israeli expectations. Given popular dissatisfaction with the present arrangements, which are exacerbated by high unemployment, gross abuses of police power and rampant official corruption, the PA enforces the national unity it claims to represent through a combination of patronage and repression.

### III. PALESTINIAN POLITICS IN THE INTERIM

One might reasonably imagine that repression, corruption and authoritarianism would generate broad support among the Palestinian public for human rights and the organizations that represent that cause. Popular acceptance of the need for unity, however, and the symbolic legitimacy of Arafat's leadership have remained relatively strong, albeit subject to fluctuation. Moreover, present conditions have produced a powerful dependency on the PA for survival; fully one-fifth of employed Palestinians work in the public sector, and job security is made directly contingent on support for the regime. Of the employed, a relatively large number (estimated at 40,000) work in the fourteen security services operating in the "self-governing" areas, illuminating both patronage and a will to repress.<sup>5</sup>

Because of the fragility of the interim, even before the second intifada, there has been little or no official tolerance for criticism. Even some within the Palestinian human rights community are persuaded that *this is not the time* to criticize the PA because it could weaken the Palestinian position in the negotiations and undermine future territorial gains and prospects for statehood. The PA has capitalized on such ambivalence by periodically singling out its critics in the human rights community for public shaming, accusing them of impeding the state-building process and serving foreign (read: Israeli and American) interests.

Alone, HROs lack the political status or popular base to counter or rival the PA. One factor that works to their advantage, however, is the importance and influence of non-governmental organizations (NGOs) in Palestine. HROs are part of a larger constellation of NGOs that enjoy a

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5. USHER, *supra* note 3.

great deal of legitimacy as home-grown and historically active on behalf of the needs and interests of society.

Over the decades of Israeli occupation, NGOs performed many of the duties and provided services that would, under “normal” conditions, have been undertaken by a state: education, medical care, agricultural development, vocational training, small-business support, data gathering, survey research, and so on. Many NGOs began as specialized branches of the various PLO factions, functioning as part of a mass movement and contributing to the national struggle. Because Israel outlawed nationalist organizations and activism, NGOs assumed increasingly important public roles and, in some cases, greater autonomy from the PLO factions from which they had originated.

During the first uprising, when the Palestinian population was engaged in mass resistance against Israeli occupation, the situation in the territories deteriorated into then unprecedented levels of violence and repression. Under these conditions of heightened emergency, Palestinian NGOs expanded their service roles and activities. Such expansion propelled an increasing reliance on foreign donors for operating funds. This dependence increased after the Gulf War in 1991, when funding from the PLO and other Arab governments to the West Bank and Gaza shriveled. NGOs’ eligibility for funding from foreign governments and foundations often required them to adopt a more “professional,” less overtly political-national approach to their practices. This shift from mass-based movements to professional organizations weakened the connections between NGOs and their “grass-roots” constituencies.<sup>6</sup> Nevertheless, NGOs retained local legitimacy as the backbone of “civil society” because they continued to provide crucial services and to articulate clear civic and social agendas. They also continued to provide an important source of employment, especially for middle class and educated Palestinians seeking to pursue careers that align with their skills and commitments.

When the PLO leaders came to the West Bank and Gaza from abroad (Tunis) in 1994, they saw the power and influence of these NGOs as something to be incorporated—or subordinated—to the PA. As Hammami, Hilal and Tamari explain, tensions between the PA and NGOs have arisen out of struggles to define and establish “internal

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6. See George Giacaman, *Popular Movements and Democratic Transformation*, 16 NEWS FROM WITHIN 3 (2000); Rema Hammami, *NGOs: The Professionalisation of Politics*, 37 RACE AND CLASS 51 (1995); Majed Nassar, *Palestinian NGOs: Prospects in the Post-Oslo Era*, 14 NEWS FROM WITHIN 10 (1998); Ahmed Nimer, *From Mobilizers to Service Providers: NGOs and the Left in Palestine*, 13 NEWS FROM WITHIN 11 (1997).

boundaries” between “state” and “civil society” in the interim period.<sup>7</sup> According to George Giacaman, the “PLO model,” developed in the diaspora, was one of “exaggerated centralism,” involving a blurring of society and civil institutions into the framework of a quasi-state.<sup>8</sup> The PA instituted this model in the West Bank and Gaza, producing a political system that could be described as a mosaic of axes all vertically incorporated (through clientelism) or otherwise dominated by the center, in which decision-making power is monopolized by Arafat and political elites with close ties to him. This top-down centralism contradicted the political culture that emerged in the territories during the decades of occupation, in which political power was decentralized and decision-making about issues of national importance tended to be far more democratic.

PA efforts to establish a monopoly on power and influence in the territories included targeting NGOs on the grounds that their operational autonomy was no longer necessary or beneficial now that a central government exists. The PA was also motivated by a desire to commandeer all foreign aid coming to Palestine, thereby hoping to turn some NGOs into PA clients and to starve others to death, notably HROs. In 1995, the PA moved to rein in this sector. The timing was linked to a World Bank initiative to establish a fifteen million dollar Palestinian NGO trust fund. Among the tactics used by the PA was the introduction of legislation modeled on a highly restrictive Egyptian NGO law, which includes the stipulation that the Ministry of Interior must approve all foreign funding.<sup>9</sup> The Palestinian NGO network (PNGO) mobilized to prevent this outcome by drafting a more liberal law and successfully lobbying for the support of the Palestinian Legislative Council (PLC) and foreign donors. The confrontation continued when Arafat refused to sign the law, insisting that the regulating authority should be the Ministry of Interior,<sup>10</sup> rather than the Ministry of Justice, which PNGO was demanding. The outcome was a compromise: the Ministry of Interior would be the responsible authority, but the law was the liberal version passed by the PLC, which Arafat finally signed in January 2000. One of the consequences resulting from the PA’s efforts to undercut the collective power and influence of NGOs was the cultivation of a distinction between “good” ones (charitable institutions and service providers) and “bad”

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7. See generally Rema Hammami, Jamil Hilal, & Salim Tamari, *Civil Society and Governance in Palestine* (1999) (unpublished paper) (on file with author).

8. See Giacaman, *supra* note 6.

9. Julia Pinter, *NGOs’ Dilemmas*, MIDDLE EAST REP., Spring 2000, at 34-37.

10. The Ministry of Interior houses the security services and is regarded as the most repressive and invasive branch of the government.

ones (primarily HROs).<sup>11</sup>

#### IV. HUMAN RIGHTS ARE "WESTERN"

PA enmity toward HROs is only one factor, albeit an important one, in explaining the difficulties of promoting human rights in Palestine. Another is the belief that human rights are "Western." A deep sense of having been wronged by "the West" in general, and the United States in particular, is one of the most powerful tropes in Palestinian national discourse. Since many Palestinians, and other Arabs, are inclined to see the framework of human rights as a Western import, their credibility is diminished.<sup>12</sup> This crisis of credibility is further compounded by the double standard that many Western governments apply in their uses of human rights rhetoric and related practices, often to the detriment of people in the Middle East. For Palestinians, the most glaring and grating example is the haste and fury of a United States-led intervention to drive Iraq out of occupied Kuwait, followed by the imposition and perpetuation of sanctions that have devastated Iraqi society, while the decades-long Israeli occupation of the West Bank, Gaza, the Golan Heights and southern Lebanon mobilized no military reprisals or economic sanctions from the same governments.

The notion that human rights norms are "Western" is easily demonstrated by those inclined to make or accept this argument. Historically, international human rights were established at a time when much of the world, including Palestine, was still under European colonial rule. The Universal Declaration of Human Rights was passed in 1948, the same year Palestinians suffered their greatest disaster (*al-naqba*). In subsequent decades, Palestinians, as a stateless people, have had little opportunity to participate in the state-centered processes of human rights norm setting, treaty drafting, enforcement, and so on. Moreover, the core human rights principles of "universalism," "equality" and "self-determination" have stood in direct and utter contradiction to most Palestinians' lived realities, and thus ring hollow on the popular level. This has been compounded by a failure on the part of the international community to enforce international laws to protect or promote Palestinians' rights, including the right of refugees to return to their homeland, or to prevent Israeli violations, including torture, deportations, collective punishment, confiscation of land, and the settlement of its own citizens in territories

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11. Rema Hammami, Jamil Hilal & Salim Tamari, *Civil Society in Palestine: Case Studies* (1999) (unpublished paper) (on file with author); Rema Hammami, *Palestinian NGOs Since Oslo: From NGO Politics to Social Movements?*, MIDDLE EAST REP., Spring 2000, at 16-19, 27, 48.

12. Bahey El Din Hassan, *Credibility Crisis of International Human Rights in the Arab World*, 2 HUM. RTS. DIALOGUE 1, 9-10 (2000).

occupied in war.<sup>13</sup>

The “Western-ness” of human rights and their irrelevance to non-Western societies is a contestable claim, as demonstrated by the development of active human rights movements throughout the Third World. In the West Bank and Gaza, human rights activism became linked and complimentary to other forms of struggle for self-determination. During the occupation, Palestinian human rights activists and organizations attracted broad popular support for their capacity to direct international attention and criticism to violations by the Israeli state, especially during the first uprising.

With regard to the current situation, it is crucial to understand that the PLO leadership in the diaspora never bought into or adapted itself to a human rights framework. Lip service was paid if HROs in the West Bank and Gaza could serve a national-political purpose of condemning or restraining Israel. But HROs were later regarded as hostile and dangerous once the PA was established and the standards were applied to restrain and judge them. The PA’s primary tactic to discredit HROs has been to promote the idea that they and their standards are “foreign.” This critique resonates with many Palestinians because of an enduring perception that human rights remain an instrument of Western governments, often invoked in ways that discriminate against Arabs and Muslims.

Skepticism about human rights among Palestinians in the West Bank and Gaza cannot be dismissed merely as an example of national politics trumping law, or nostalgia for the revolutionary “anti-imperialist” stance of a bygone era. Rather, it reflects a critical assessment of what the politics and practices of human rights have become. It is a question of who “controls” human rights. All of the major international organizations are based or headquartered in Europe or the U.S., and their operating style, activities and agendas tend to reflect professional norms and politico-legal priorities of those societies. Hence, many outside the West see international human rights organizations as, at best, distant, often out of touch with local realities or insensitive to local sensibilities, or, at worst, mechanisms functioning to fortify Western global hegemony.<sup>14</sup>

In Palestine, as elsewhere, for *local* human rights organizations to gain the attention and support of international human rights organiza-

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13. JOHN QUIGLEY, *PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE* (1990); HUMAN RIGHTS, SELF-DETERMINATION AND POLITICAL CHANGE IN THE OCCUPIED PALESTINIAN TERRITORIES (Stephen Bowen ed., 1997); Richard Falk, *International Law and the al-Aqsa Intifada*, MIDDLE EAST REP., Winter 2000, at 16-18.

14. See HUMAN RIGHTS FIFTY YEARS ON: A REAPPRAISAL (Tony Evans ed., 1998).

tions, they have had to—or chosen to—emulate the same models and strategies. This means prioritizing political and civil rights over, or to the exclusion of, social and economic rights; functioning as watchdogs chasing discrete and verifiable violations; producing reports and statements in a common human rights vernacular that is de-politicized and legalistic; and seeing and promoting themselves as “neutral” and “objective.” Following this model has become increasingly crucial to obtaining foreign funding, and obtaining foreign funding has, in turn, become crucial to following this model. The funding that supports Palestinian HROs comes almost exclusively from the West—from Western governments and foundations, and Western-based and controlled organizations such as the World Bank.

HROs not only depend on Western funding, they also depend on—and work to gain the attention of—Western audiences. In other words, Western actors (governments, media, organizations) have become the *primary constituencies* for local human rights activism. According to Abdullahi An-Na'im:

Human rights “dependency” is the idea of generating pressure in the North to persuade governments in the South to protect the rights of their people . . . . [This] is not how human rights are protected in the North itself . . . . But human rights dependency works and is seen as legitimate because this approach does have some immediate impact on the countries of the South. [Arab governments are] more responsive to pressures from Western governments than from their own people . . . . But the problem is that this approach disregards the point that human rights dependency is possible because of other dependencies . . . . Human rights dependency legitimizes other dependencies and perpetuates dependent relationships.<sup>15</sup>

The dependency of HROs on Western support and attention is by no means particular to Palestine. But because the PA is so dependent on foreign support for its budget and, indeed, its survival, it is extremely and profoundly vulnerable to international opinion. Thus, unlike other governments with weak human rights records which have the “luxury” of greater self-sufficiency to ignore international criticisms, or at least have the status as sovereign states to defend themselves in international fora, the impact of human rights critiques on the PA could be devastating. Luckily for the PA, the two most powerful foreign actors, the U.S. and Israeli governments, are less concerned about, if not flatly indiffer-

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15. Middle East Research & Information Project, *Problems of Dependency: Human Rights Organizations in the Arab World: An Interview with Abdullahi An-Na'im*, MIDDLE EAST REP., Spring 2000, at 20-23, 46-47. (transcript of an interview conducted by Lisa Hajjar on Jan. 7, 2000).

ent to, violations of Palestinians' rights and the rule of law as long as the PA remains committed to "fighting terrorism."

## V. DEPENDENCY AND AUTONOMY

PA dependency affects its legitimacy among its own constituency. The PA is a creation of the negotiations; its geographically and politically limited powers, and institutional subordination to Israeli hegemony (e.g., Israel has veto power over new legislation) are reminders of the weakness of the Palestinian position. The main leverage Palestinians have is a threat to "return to the streets" should they fail to achieve independent statehood and other national demands (notably Jerusalem as the capital and the refugees' right of return). This leverage has been amply demonstrated by the second uprising. But the renewal of wide scale unrest also demonstrates the political weakness and vulnerability of the PA since its fate and survival are contingent on its capacity to maintain order.

Throughout the interim, order has served as the marker of Palestinians' "good faith" and commitment to peace, even if it had to be imposed in brutal fashion. The PA's use of repression to disable opposition and thwart unrest has been disparaged by discontented sectors of the population as a buckling under to Israeli demands and U.S. pressure. In other words, the PA is vulnerable to domestic criticisms that *it* has become a tool of Western power and interests. Hence, silencing critics has been crucial to obscuring the PA's own dependency and political failings.

Critiques of the PA come from many quarters, including the Islamist movement and leftist opposition parties. But HROs' critiques have been particularly damning because they have focused international attention on the PA's anti-democratic, repressive and often violent modes of rule. To the extent that some repression, especially against Islamists, clearly has been undertaken at the behest of Israel raises serious questions about where the PA's accountability lies. At the same time, the PA's rejoinder to criticisms of official repression and corruption is that HROs are pandering to foreign powers and serving the interests (whether purposefully or not) of "the enemy." Accusations of serving "foreign interests" and lack of local accountability have become a double-edged sword, wielded to cut into the legitimacy of both HROs and the PA, highlighting the dependency of both on foreign support and funding.

The divisive implications of dependency were dramatically illustrated in a highly public confrontation that developed between the PA and HROs in 1999. It began when the Office of the United Nations Special Coordinator in the Occupied Territories (UNSCO) issued a report,

"Rule of Law Development in the West Bank and Gaza Strip: Survey of the Development Effort," that detailed foreign donor support for the rule of law sector in the Palestinian self-governing areas.<sup>16</sup> Because of the report's focus on legal and human rights capacity-building, it highlights and commends the contributions of NGOs, noting that they "act as the voice of civil society and are the heart of democratic discourse."<sup>17</sup> According to the report, of the more than one hundred million dollars contributed to develop the Palestinian rule of law sector, approximately twenty million dollars has gone to NGOs with human rights, legal and civic mandates.<sup>18</sup>

The report was seized upon by some officials in the PA to denounce NGOs as "a bunch of thieves, fat cats and foreign agents."<sup>19</sup> Freih Abu Middein, the Minister of Justice, in an interview on the PA's Voice of Palestine, "accused human rights organizations of being stooges of foreign backers and claimed their directors received salaries of more than \$10,000, equivalent to the salaries of ten judges."<sup>20</sup>

This confrontation spiraled into an open debate throughout Palestinian society. For example, six political factions issued a joint public statement not only denouncing the PA's smear campaign and defending NGOs' nationalist credentials, but also calling for greater NGO financial transparency and more accountability to Palestinian society rather than foreign donors. Rema Hammami writes:

The running and heated debate in the press throughout June and July [1999] pitted the sorry state of the PA legal system against alleged financial excesses of the NGOs as a whole and accusations of "collaboration" and disloyalty by human rights groups in particular. The public was not likely to be sympathetic to the PA given the impact of the dysfunctional legal system and overt corruption that has marked PA governance. However, given the dramatic drops in standards of

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16. The UNSCO report details the institutional organization and funding allocations to the rule of law sector, which is divided into fifteen separate areas. The total amount committed to this sector is US \$100,752,612. The fifteen areas and percentage of funding each received are: Ministry of Justice Capacity-building (2.2%); Judicial System (14%); Prosecutorial System (0.03%); Legal Practice (5.1%); Law Enforcement (14.4%); Penal Institution (0.5%); National Policy for Human Rights/Rule of Law (4.9%); NGOs (16.7%); Palestinian Independent Commission for Citizens' Rights (1.7%); Legislative Council Capacity-building (15%); Law Reform (4.4%); Forensic Science Capacity-building (1.5%); Electoral System (10.2%); Conflict Resolution Capacity-building (1.4%); Human Rights and Public Information (7.5%). OFFICE OF THE UNITED NATIONS SPECIAL COORDINATOR IN THE OCCUPIED TERRITORIES, RULE OF LAW DEVELOPMENT IN THE WEST BANK AND GAZA STRIP: SURVEY AND STATE OF THE DEVELOPMENT EFFORT 49-50 (May 1999), available at <http://www.arts.mcgill.ca/programs/polisci/faculty/rexb/unesco-ruleoflaw/>.

17. *Id.* at 31.

18. *Id.* at 33-40.

19. Hammami, *supra* note 11, at 18.

20. *Id.* at 19.

living for much of the population, post-Oslo, there was some popular sympathy with the accusation that NGOs were living too well off the donor "gravy train."<sup>21</sup>

The crisis sparked by the UNSCO report tapped a deep vein of discontent and anxieties about governance during the interim. The Palestinian Legislative Council's increasing reliance on support by NGOs to leverage its own struggle for power vis-à-vis the PA executive branch inspired some members to speak out in defense of HROs. This support derives from a shared interest in entrenching a separation of powers and legislative autonomy (which Arafat frequently violates through a refusal to sign passed laws into force). But others in the PLC with closer ties to the PA executive have distanced themselves or openly joined in criticizing the NGOs.

In November 1999, another crisis developed when twenty prominent Palestinians, including nine PLC members, signed a petition titled "A Cry from the Homeland," protesting PA corruption, abuse of power, and abandonment of national goals (notably the rights of refugees). The PA regarded the petition as "political incitement," and responded harshly, arresting nine signatories and putting two more under house arrest. Under pressure from the PA executive, a special session of the PLC was called, and, in a close vote, the nine members who had signed the petition were condemned for causing "internal conflict."<sup>22</sup> HROs (and other NGOs) condemned the arrests and attacks on petitioners as inimical to freedom of speech and democratization. But public disagreements over the legitimacy and utility of such a petition stoked divisions within society over whether the preservation of national unity justified draconian tactics against critics and opponents of the government.

The position of the legal sector in confrontations between the PA and HROs has reflected these divisions. Some legal professionals appreciate the role that HROs have played in bringing problems they face in their own work to the public's attention. These problems include egregious disregard for the authority and autonomy of the judiciary, exemplified by repeated refusals on the part of the PA or security forces to execute judicial decisions. They also include the trampling of the rule of law and lawyers' rights to represent clients in fair and open procedures in the PA's shadowy "security courts." On the other hand, the legal sector is highly vulnerable to an authoritarian PA, and many legal professionals have become dependent on the PA for their livelihood,

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21. *Id.* at 19.

22. One PLC member, who was called in for questioning by the security services, was badly beaten, although officials denied responsibility, saying the wounds were self-inflicted in further effort on his part to discredit the PA. Another signatory was shot and wounded outside his home by masked men widely assumed to be security agents.

thereby impeding or stifling their willingness to support or side with critics.

In May 2000, the confrontation between the PA and HROs shifted directly onto the terrain of the legal profession. The PA launched a new campaign to neutralize and inhibit HROs by seeking to force the Palestinian Bar Association to exclude NGO employees from membership on the grounds that they are “non-practicing lawyers.” Since many HROs are run and staffed by lawyers, if successful, this could force them out of their own professional association. The rhetoric circulating around this crisis over human rights lawyers’ membership in the Bar is a continuation of debates over whether HROs function as “foreign agents” with political agendas that damage national interests, or as defenders of Palestinians’ rights against a repressive and largely unaccountable government.<sup>23</sup>

In March 2001, the confrontation took a new turn when the Palestinian High Court issued a decision to postpone elections for the Bar Association. Although the decision relates the postponement to the current crisis with Israel, people in the human rights community suspect that the PA pushed the court to take this stance to prevent the Bar from playing a more active role in monitoring the government.

## VI. BUILDING THE RULE OF LAW

Given the PA’s open animosity to critics and its ability to monopolize the discourse of “national unity,” HROs have been challenged in their ability to contribute to the entrenchment of a culture of rights and the rule of law. Moreover, the problems facing Palestinian society are so vast and serious that HROs are incapable of effectively monitoring or otherwise intervening in all areas warranting their attention. Although HROs have made efforts to address social and economic rights, for example supporting teachers striking for higher salaries, or protesting industrial pollution and mismanagement, for the most part they have limited their work to violations of political and civil rights. Such selectivity has made them vulnerable to criticisms that they are merely mimicking their Western counterparts, or that they are forfeiting a chance to build a stronger popular base by not prioritizing the most pressing needs and concerns of the majority (i.e., poverty, unemployment and limited social services).

In order to appreciate the challenges to building the rule of law in the interim, it is necessary to contextualize this project in the broader

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23. See *Special Section on Crisis in the Palestinian Bar Association*, 40 PEOPLE’S RTS. 26 (2000).

history of Palestinian society in the West Bank and Gaza. During the occupation, the population was united in its opposition to Israeli rule and every Israeli violation could be seen as part of a larger assault on society. Hence, the discourse on the rule of law was deployed as a form of protest. But Palestinians outside of the human rights and legal community had little understanding of law except for the draconian and punitive features of the Israeli military legal system. Although human rights critiques of Israeli violations were framed in legal terms and referenced international laws, they could be interpreted on the popular level as serving a national-political rather than legal purpose.

Alienation from law was heightened during the first uprising. For example, one of the strategies of resistance was to boycott Palestinian courts on the grounds that they functioned as puppets or proxies of the Israeli military administration. The alternatives that people developed for resolving inter-Palestinian conflicts were either “un-legal,” such as community arbitration, or “anti-legal,” such as vigilantism. By the end of the 1980s, as the situation in the West Bank and Gaza deteriorated into internecine strife, people became increasingly reliant on “factional justice,” which contributed to an atmosphere of anti-legalism. To the extent that HROs began protesting Palestinian-on-Palestinian violence and human rights violations even before the Israeli-Palestinian negotiations began in 1991, they were articulating an “objectivity” that lacked wide popular appeal because it cut against the grain of factional loyalties. The atmosphere of anti-legalism was compounded when the PA came to power. The underdeveloped legal system and panoply of outdated and conflicting legal codes in force in the West Bank and Gaza merely facilitated PA authoritarianism and disregard for the rule of law.<sup>24</sup>

The difficulties and dilemmas in building the rule of law and promoting a culture of rights in Palestine can be examined through the issue of the death penalty. This issue brings together an array of concerns that HROs have been striving to address: (1) lack of due process protections, an independent judiciary, and a clear set of laws; (2) unfair trial procedures which are particularly pronounced in the security courts; (3) the use of torture; (4) the impunity and unprofessionalism of the security

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24. The various legal codes in force in the West Bank and Gaza include laws dating from the Ottoman period and the British Mandate over Palestine, as well as Jordanian laws (West Bank) and Egyptian laws (Gaza) dating from the period between 1948 and 1967. Another set are Israeli military orders, imposed during the decades of occupation, although their status in PA areas in the interim is unclear and contested. See JONATHAN KUTTAB AND RAJA SHEHADEH, *THE WEST BANK AND THE RULE OF LAW* (1980); RAJA SHEHADEH, *OCCUPIER'S LAW: ISRAEL AND THE WEST BANK* (1988); *INTERNATIONAL LAW AND THE ADMINISTRATION OF OCCUPIED TERRITORIES* (Emma Playfair ed., 1992).

services; and (5) excessive reliance on violence to resolve problems and conflicts.

For all its gross violations of Palestinians' rights, the Israeli military administration rarely sentenced people to death and never carried out a court-ordered execution even though it did use extra-legal executions by security forces. Therefore, the PA's introduction of the death penalty was a significant departure from the previous regime. Many HROs have taken a firm stance against the death penalty as a violation of human rights, and deride the way it has been adopted and used. The law used by the PA to pass death sentences is based on the PLO's Revolutionary Law of 1979. Critics point out that there is no legal basis to "import" such a law from Lebanon to the West Bank and Gaza, especially since its imposition by the PA executive has circumvented the legislative process. The rampant abuses and problems in the security courts, where almost all capital trials have been conducted, cast serious doubt on the availability of legal justice for defendants. However, the PA, like other regimes that rely on the death penalty, has justified this punishment as "necessary" to fight crime and "legitimate" because the people demand it.

Since coming to power, the PA has executed five people and sentenced an additional thirty-one to death. Of this total, twenty-eight are members of the security services. In a bizarre manner, the PA has sought to redress popular discontentment with the enormous size and malfeasance of the security services by subjecting some of them to the ultimate punishment. Executing security agents enables the PA to rationalize that they are "not above the law." However, what it actually illuminates is a rampant lawlessness, in which the PA is implicated.

The lack of coordination and oversight of the security services and poor training of its employees have fostered a dangerous and violent environment in areas under PA control. Some security agents have utilized their power and weaponry to conduct both public and private affairs with impunity. Two of the five executions conducted to date involved brothers, both security agents, who murdered two other brothers, also security agents, in the heat of a family squabble. The family and the security agency of the victims demanded retribution. Satisfying this demand, the PA became the executor of a "blood feud," ostensibly to avert further inter-family violence but also to satisfy public anger at security agents run amok. The two perpetrators were tried and executed within three days of the crime. The third execution involved another security agent accused of raping a six-year-old boy. The nature of the crime provoked intense public outrage and popular demand for the death penalty. In this case, the perpetrator was not executed for the crime of

rape, but rather for “inciting violence against the PA,” namely the public unrest that the crime provoked. According to the Director of Preventive Security in Gaza, the security agent/rapist “brought down the reputation of all the security services. We had to protect our reputation.”<sup>25</sup> As Nina Sovich notes, “By adding executions to [the PA’s system of political control], Arafat has created another prize over which his constituents can compete. Authority-sponsored execution is now a benchmark for the credibility and reputation of each security service, family and political party.”<sup>26</sup>

Between 1999 and 2001, there was a de facto hiatus on executions. In January 2001, however, executions resumed when two people were killed after being convicted of collaborating with Israel. The executions, which took place in Gaza and Nablus, were public spectacles attended by thousands. Given the violence Israel has been using against Palestinians since October 2000, anger against collaborators was fierce. In February 2001, two more were sentenced to death. One is an eighteen-year-old whose family describes him as simple minded, and the other a security agent convicted of providing information to the Israeli military and deliberately opening fire in Hebron from a PA area which provoked a brutal Israel retaliation.

While HRO opposition to the death penalty may find wider popular support, it is difficult to gauge public opinion on the principle when the practice has been utilized as a means of reining in security forces so prone to abuse and excess, and striking at Israel by killing collaborators. Indeed, HROs have found it difficult to articulate this opposition in a way that resonates with the public, given the authoritarian nature of PA rule and gross Israeli violations during this interim period. The lawlessness and resort to violence that characterize life in the West Bank and Gaza are not solely the fault of the PA; they are consequences of a longer history of disenfranchisement, misrule, and illegality.

In the decades of Israeli occupation, the law was utilized to dispossess and disempower rather than protect Palestinians. This fostered a skepticism about law’s positive possibilities. The history of the PLO in diaspora, in which armed struggle and factional loyalty were valorized, bred little use or familiarity with law. This has been reflected in the governing style of the PA. Moreover, as long as statehood is deferred, it remains difficult to hold the PA accountable to the international legal standards of a state, or to cultivate popular expectations or support for legal mechanisms and remedies.

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25. Nina Sovich, *The Death Penalty Under the PA*, 15 NEWS FROM WITHIN 4 (1999).

26. *Id.*

### VIII. CONCLUSION

Those who have been working to defend Palestinians' rights and build the rule of law during this interim period have found themselves in the unenviable position as critics of the first Palestinian government. The form that this government has assumed, and the practices in which it routinely engages are a far cry from the dreams Palestinians once shared about their future. While HROs have made PA authoritarianism and disregard for the rule of law a focus of their criticism, their successes have been mixed. The institutions whose support for human rights and the rule of law is crucial—the media, courts, political parties, PLC, Bar Association—are all vulnerable to PA repression or intervention. The PA's own vulnerability and lack of sovereignty exacerbates the perceived need and tendency to silence critics and repress political opponents. And the population's dependency on the PA as the main arbiter of social goods and economic resources undercuts or divides opposition. Consequently, HROs' capacity to galvanize strong and consistent public support for human rights has been severely impeded.

The second uprising has provided a *modus vivendi* for the PA and Palestinian HROs. The costs and dangers to Palestinians of Israeli violence, including the use of a pantheon of military hardware such as helicopter gunships, bombs and tanks, has resurrected, at least temporarily, an earlier role that HROs played of monitoring and reporting on Israeli violations of Palestinians' human rights. The PA and HROs have been united in their condemnation of Israel's "excessive use of force" and their calls for an impartial (i.e., not U.S.) international commission to investigate the causes of the current crisis. But when this crisis abates, as it will, the tensions that characterized PA-HRO relations will, presumably, resume, as will struggles over human rights and the rule of law in Palestine.